the legatee claimed as compensation, the amount of the legacy in addition to the market value of the land on the ground that failure to use the named site would forfeit the legacy. *Held*, that the legacy would not be forfeited. *New Haven County* v. *Parish of Trinity Church*, 73 Atl. 789 (Conn.).

The effect of non-performance of a condition subsequent is ordinarily to divest the legacy. *Wheeler* v. *Lester*, 1 Bradf. (N. Y.) 213. However, there will be no forfeiture when performance by the legatee is, or later becomes impossible; as, for example, where he is prevented from performing by act of God. *Parker* v. *Parker*, 123 Mass. 584. The same is true when performance is impossible because illegal. *Cheairs* v. *Smith*, 37 Miss. 646. Impossibility because of foreign law is also an excuse. *Young* v. *Vass' Ex'r*, 1 Patt. & H. (Va.) 167. In all these cases, the law seeks to give effect to the testator's intentions; so if his primary object can still be accomplished, the legacy should not be divested, merely because it cannot be applied exactly as prescribed. *Young* v. *Vass' Ex'r.*, *supra*. But if the illegal condition is the sole motive of the bequest, the legatee being merely a trustee not intended to take a beneficial interest, the gift will be forfeited. *Lusk* v. *Lewis*, 32 Miss. 297. Since the location of the Sunday school on the particular site was not the primary motive of the testatrix, the principal case seems rightly decided.

LIFE ESTATE — PERSONALTY TO FOLLOW LIMITATIONS OF REALTY. — Certain chattels were given to be "used, held and enjoyed" by the person for the time being entitled to a certain mansion-house; but title to them was not to vest in a tenant-in-tail until majority, although such tenant was to have the "use and benefit" of them until that time. A tenant-in-tail attained majority, but died before coming into possession of the realty. *Held*, that since there is a plain intention on the part of the settlor, that the chattels should vest in a tenant-in-tail in possession, the personal representative of the deceased is not entitled to them. *In re Lord Chesham's Settlement*, 25 T. L. R. 657 (Eng., Ct. App., June 15, 1909).

This decision reverses that of the Chancery Division discussed in 22 HARV. L. REV. 441.

MORTGAGES — PRIORITIES — MORTGAGE FOR FUTURE ADVANCES. — A executed a mortgage to B in the form of a bill of sale of a certain dredge, to secure the repayment of money already advanced and such advances as might thereafter be made. This mortgage was duly recorded. A later gave a second mortgage to C, which was likewise recorded. In ignorance of the mortgage to C, B made further advances to A. C knew the amount of the original advance by B, and probably knew the state of the accounts between A and B when he took his second mortgage. *Held*, that B's lien is prior to that of C both as to the original and as to the subsequent advances. *The Seattle*, 170 Fed. 284 (C. C. A., Ninth Circ.).

A mortgage to secure present and future advances gives a prior lien for advances made in ignorance of, but subsequent to, an intervening incumbrance. *Ackerman* v. *Hunsicker*, 85 N. Y. 43. The mortgagee is in the position of a trustee or other obligor who has dealt with his obligee in ignorance of an assignment or incumbrance of the latter's interest. *Cf. Newman* v. *Newman*, 28 Ch. D. 674. By the great weight of authority, the recording of the second mortgage is not a notice to the first mortgagee, unless he takes a new conveyance. This is true even where the statute makes the record notice "to all persons"; for this is taken to mean only those acquiring a new interest, whereas the mortgagee relies on what he already has. *Birnie* v. *Main*, 29 Ark. 591. *Contra, Ladue* v. *Detroit & Milwaukee R. R.*, 13 Mich. 380. The court questions *obiter* whether a mere statement that the mortgage is "for advances to be made" is not too vague. A second mortgagee, however, who advanced his money without inquiry as to their amount could hardly be a *bona fide* purchaser; and he could protect himself as to subsequent advances by giving notice of his incumbrance to the first mortgagee. *Witczinski* v. *Everman*, 51 Miss. 841. *Contra, Balch* v. *Chaffee*, 73 Conn. 318.

POWERS — EXTINGUISHMENT OF POWER APPENDANT BY CONVEYANCE IN FEE BEFORE APPOINTMENT. — The testator devised property to trustees for the use of his mother for life, and at her death to be paid over to such charitable institution as his widow should elect; but in default of such election the income to be paid to his widow for life, and at her death the property to be divided between two specified associations. The mother, the widow, the testamentary trustees, and the trustees of the specified associations joined in a conveyance to the appellee. *Held*, that the power appendant is extinguished by the conveyance. *Columbia Trust Co.* v. *Christopher*, 117 S. W. 943 (Ky.).

For a discussion of the principles involved, see 22 HARV. L. REV. 444.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — EXCLUSIVE TELEPHONE CONTRACT. — Suit was brought on a contract whereby the defendant telephone company agreed to give exclusive connection to the plaintiff telephone company. *Held*, that such a contract will not be enforced by the courts. *United States Telephone Co.* v. *Central Union Telephone Co. et al.*, 171 Fed. 130 (C. C. N. D. Ohio). See NOTES, p. 54.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — TERMINATION OF TELEPHONE CONNECTION. — The plaintiff and defendant telephone systems were physically connected under a verbal agreement that each should render service to the patrons of the other. No provision for termination was made. *Held*, that the agreement fixed a status terminable only by the retirement of one or the other of the parties from the telephone business. *State ex rel. Goodwin* v. *Cadwallader*, 87 N. E. 644 (Sup. Ct., Ind.). See NOTES, p. 54.

RESTRAINT OF TRADE — COMBINATION BY AGREEMENTS AS TO PRODUCT OR PRICES — INJUNCTION AGAINST UNLAWFUL COMBINATION. — Certain insurance companies entered into an agreement, by which the management was to be in a central body, which should establish uniform rates. The Attorney General, on behalf of the public, sought to enjoin them from acting under the agreement. *Held*, that he is entitled to the injunction. *McCarter* v. *Firemen's Ins. Co.*, 73 Atl. 80 (N. J., Ct. Err. & App.).

Contracts tending to suppress competition are unlawful only in the sense that they are unenforceable. *Richardson* v. *Buhl*, 77 Mich. 632. The law gives no affirmative relief against them. *McGregor* v. *Mogul Steamship Co.*, [1892] A. C. 25. A different rule applies to combinations of public service companies, whose *ultra vires* acts likely to injure the public can be enjoined by the state. *Attorney General* v. *Great Northern Ry.*, 1 Dr. & Sm. 154. So too a statute fixing prices charged by a corporation engaged in a business affected with a public interest has been held to be constitutional. *Munn* v. *Illinois*, 94 U. S. 113. It might be argued that insurance is such a business, but there is no authority for so treating insurance as a public service. In spite of the court's ingenious and plausible opinion, the principal case marks an extension of equity jurisdiction as yet unsupported by authority. See *Queen Ins. Co.* v. *State*, 86 Tex. 250. The result, although desirable, might more properly be reached by statute than by judicial decision. See 19 HARV. L. REV. 301.

RULE IN SHELLEY'S CASE — APPLICATION TO PERSONALTY. — The residue of an estate consisting of realty and personalty was left upon trust to pay the income "in equal shares to A and B during their lives, and upon the death of either her share to go to her heirs" until one half of the principal had been made over to them. *Held*, that though by the Rule in Shelley's Case A and B take an equitable estate in fee in the realty, that rule is inapplicable to the personalty. *Lord* v. *Comstock*, 88 N. E. 1012 (Ill.). See NOTES, p. 51.

SALES — TIME OF PASSING OF TITLE — CASH SALES: WAIVER OF THE CONDITION BY DELIVERY. — The plaintiff, who lived some distance from town, sold